

October 7, 2022

VIA ECF

The Honorable Sarah L. Cave
United States District Court
Daniel Patrick Moynihan United States Courthouse
Southern District of New York
500 Pearl Street, Room 1670
New York, NY 10007-1312

Re: Joint Letter in *Flynn et al v. Cable News Network, Inc.*, No. 1:21-cv-02587-GHW-SLC (S.D.N.Y.)

Dear Judge Cave:

Pursuant to the Court's order (ECF No. 70), Plaintiffs Jack and Leslie Flynn (the "Flynnns") and Defendant Cable News Network, Inc. ("CNN") respectfully submit this joint letter (i) advising the Court on whether the parties are interested in a settlement conference; and (ii) the status of discovery.

First, the parties are not currently interested in a settlement conference, as they do not believe such discussions would be fruitful at this time.

Second, since the parties' August 24, 2022 joint letter (ECF No. 69), the parties have made the following progress in discovery:

The parties continue to exchange discovery requests and document productions. Regarding discovery requests, on September 21, 2022, CNN served its second set of requests for production. The Flynnns' responses and objections are due October 21, 2022. On September 21, 2022, the Flynnns served their fifth set of requests for production. CNN's responses and objections are due October 21, 2022. On October 6, 2022, the Flynnns served their sixth set of requests for production. CNN's responses and objections are due November 5, 2022. Regarding document productions, CNN made additional productions on August 15, 2022 and September 29, 2022. The Flynnns made additional productions on September 4, 2022, September 5, 2022, September 11, 2022, September 15, 2022, and September 27, 2022. Regarding social media productions, CNN is waiting for Leslie Flynn to produce a useable HTML file for her Facebook data. As CNN's counsel has explained in its detailed instructions for downloading user information, a user must select the "HTML" option. The Flynnns' counsel has advised CNN that Jack Flynn does not have a Facebook account.

Third-party discovery from individuals and social media platforms also remains ongoing. To date, CNN has served subpoenas for the production of documents on the following individuals: General Michael Flynn, Michael Flynn Jr., Joseph Flynn, Mary Flynn O'Neill, Sidney Powell, and Tracy Diaz. On September 7, 2022, CNN sent a letter to counsel for General Flynn, Michael Flynn, Jr., and Joseph Flynn (who also represents Plaintiffs in this action), raising several deficiencies in their responses and objections to the subpoenas, to which counsel responded on September 19, 2022. Regarding the third-party subpoenas to social media platforms, the Flynnns' consent forms for Parler and Twitter remain outstanding. In light of this, CNN continues to be

The Honorable Sarah L. Cave

October 7, 2022

Page 2 of 3

unable to receive social media data directly from these social media platforms, except that CNN has obtained Jack Flynn's account files directly from Parler and the Flynns have provided all data/files they obtained directly from Twitter for their @GoJackFlynn1 and @lflynn1998 accounts. Jack Flynn has not provided his Twitter data/files from his other account, @GoJackFlynn.

The parties continue to engage in meet and confer discussions to discuss various issues raised in their respective productions, responses and objections, and third-party discovery, but have reached an impasse on some issues. On September 27, 2022, CNN filed a letter-motion for a discovery conference and an order compelling the Flynns' counsel to complete an independent review of the Flynns' documents, re-produce authentic documents, and to provide the required notarized consents for the Flynns' social media accounts on Parler (ECF No. 72). Plaintiffs' counsel filed a response letter on October 1, 2022 (ECF No. 75). The court granted CNN's letter-motion for a discovery conference (ECF No. 78), which will be held telephonically on October 28, 2022 at 12:00 pm. On October 4, 2022, the Flynns filed a letter-motion for a discovery conference and an order compelling CNN to produce certain documents, including documents relating to the truncated clip used in the report at issue, phone records, and documents withheld from production and identified on a privilege log produced on July 15, 2022 (ECF No. 80). The court granted the Flynns' letter-motion for a discovery conference (ECF No. 81), which will be held telephonically on October 28, 2022 at 12:00 pm.

On October 4, 2022, the parties met and conferred via a Zoom videoconference regarding (a) CNN's concerns with General Michael Flynn, Michael Flynn Jr., and Joseph Flynn's responses and objections to their third-party subpoenas, (b) the Flynns' concerns with CNN's responses and objections to the Flynns' third and fourth requests for production, and (c) the Flynns' concerns with CNN's privilege determinations. The parties each plan to file additional letter-motions regarding multiple discovery issues that each party deems to be at an impasse.

Dated: October 7, 2022

New York, New York

Respectfully Submitted,

The Honorable Sarah L. Cave

October 7, 2022

Page 3 of 3

COUNSEL FOR PLAINTIFFS

By: /s/ Steven S. Biss

Steven S. Biss (VSB # 32972)
300 West Main Street, Suite 102
Charlottesville, Virginia 22903
Telephone: (804) 501-8272
Facsimile: (202) 318-4098
Email: stevenbiss@earthlink.net

Anthony C. Carlini, Jr., Esquire
(New York Bar # 2648374)
Handel & Carlini, LLP
1984 Hackensack Road
Poughkeepsie, NY 12603
Telephone: (845) 454-2221
Facsimile: (845) 471-1005
Email: anthony@handelcarlini.com

*ATTORNEYS FOR PLAINTIFFS JACK AND
LESLIE FLYNN*

DAVIS WRIGHT TREMAINE LLP

By: /s/ Katherine M. Bolger

Katherine M. Bolger (N.Y. Bar No. 2976868)
Lindsey B. Cherner (N.Y. Bar No. 5571534)
Meenakshi Krishnan (*pro hac vice*)
1251 Avenue of the Americas, 21st Floor
New York, NY 10020
Telephone: (212) 489-8230
katebolger@dwt.com
lindseycherner@dwt.com
meenakshikrishnan@dwt.com

SHULLMAN FUGATE PLLC

By: /s/ Deanna K. Shullman

Deanna K. Shullman (SBN 514462)
2101 Vista Parkway, Ste. 4006
West Palm Beach, Florida 33411
Telephone: (561) 429-3619
dshullman@shullmanfugate.com

*ATTORNEYS FOR CABLE NEWS NETWORK,
INC.*